

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

MARITZA MOYA-SOTO, et al.,

Plaintiffs,

v.

HOSPITAL DR. CAYETANO COLL Y
TOSTE, INC., et al.,

Defendants.

Civil No. 08-2024 (JAF)

OPINION AND ORDER

Plaintiffs, Maritza Moya-Soto (“Patient”) and members of her family,¹ bring the present diversity action for medical malpractice under Puerto Rico law against Defendants, three medical facilities,² two doctors,³ and the underwriting insurer for each. (Docket No. 1.) Plaintiffs claim direct tort liability as to the facilities and doctors under 31 L.P.R.A. § 5141 (“Article 1802”); vicarious liability as to the facilities under § 5142 (“Article 1803”); and liability as to the insurers under the Puerto Rico direct-action statute, 26 L.P.R.A. § 2003. (*Id.*) Defendant Programa Médico del Norte,

¹ Family-member plaintiffs are Patient’s husband, Luis Enrique Vélez-Román; their conjugal partnership; and their three minor children, Keishla Marie, Esther Marie, and Luis Enrique Vélez-Moya. (Docket No. 1.)

² Medical-facility defendants are Hospital Dr. Cayetano Coll y Toste, Inc.; Programa Médico del Norte, Inc.; and Hospital Metropolitano Dr. Susoni, Inc. (Docket No. 1.) Medical facility Camuy Health Services, Inc. originally appeared as a defendant in this suit but was thereafter voluntarily dismissed. (Docket No. 34.)

³ Doctor defendants are Drs. Carlos González-Amparo and Julio Narváez-Reyes, who are sued alongside their spouses and conjugal partnerships. (Docket No. 1.)

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1 Inc. (“PMN”) subsequently filed a third-party complaint claiming indemnity or contribution against
2 three PMN doctors, including Dr. Wanda I. Nieves-González (“Nieves”).⁴ (Docket No. 40.) PMN and
3 Nieves (“Movants”) move for summary judgment (Docket No. 94), Nieves by joinder (Docket No. 98),
4 and Plaintiffs oppose (Docket No. 101).

5 **I.**

6 **Factual and Procedural History**

7 We derive the following factual and procedural summary from the parties’ pleadings, motions,
8 exhibits, and statements of uncontested facts. (Docket Nos. 1; 16; 19; 21; 22; 37; 40; 58; 67; 71; 94;
9 101; 116.) We briefly state here only those facts necessary to consider the motion at hand.

10 On May 11, 2007, Patient, a diabetic, underwent surgery for a gluteal abscess at Hospital Coll
11 y Toste. Having been released, Patient began experiencing intense back pain, and she visited PMN on
12 four separate occasions between May 30 and June 4, 2007, for treatment of same. Dr. Nieves was one
13 of the PMN doctors who treated Patient. At PMN, no doctor diagnosed the source of her pain, though
14 they treated her with anti-inflammatories, pain medication, and steroids. Following her PMN treatment,
15 Patient received care at various other medical facilities; said care culminated in the discovery and
16 removal of a spinal abscess that, while normally treatable when timely diagnosed, permanently rendered
17 Patient a paraplegic with neurogenic bowel and bladder.

⁴ Third-party defendants are Drs. Judianys Santiago-Delgado, David Molina-González, and Wanda I. Nieves-González, who are sued alongside their conjugal partnerships and underwriting insurers. (Docket No. 40.)

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1 Cortés-Irizarry, 111 F.3d at 188 & n.4, we decline to disregard Dr. Keller's testimony when considering
2 this motion.

3 Regarding whether Plaintiffs have adduced the expert testimony as to duty, breach, and
4 causation that is normally required in Puerto Rico medical malpractice cases, see, e.g., Rolon-Alvarado
5 v. Municipality of San Juan, 1 F.3d 74 (1st Cir. 1993), we conclude that they have. Dr. Keller testified
6 at length as to, he perceived, the inadequate care Patient received from Dr. Nieves and other PMN
7 personnel and its potential for harm. (See, e.g., Docket Nos. 94-12 at 97-132; 94-13 at 2-4.) Given
8 Movants' contention to the contrary (Docket No. 94-3 at 15), Dr. Keller's testimony sustains genuine
9 issues of material fact.

10 **IV.**

11 **Conclusion**

12 For the reasons stated herein, we hereby **DENY** Movants' motion for summary judgment
13 (Docket No. 94).

14 **IT IS SO ORDERED.**

15 San Juan, Puerto Rico, this 14th day of January, 2010.

16 s/José Antonio Fusté
17 JOSE ANTONIO FUSTE
18 Chief U.S. District Judge